



Oregon

John A. Kitzhaber, M.D., Governor

11.3.16
Department of Environmental Quality

Northwest Region Portland Office

2020 SW 4th Avenue, Suite 400

Portland, OR 97201-4987

(503) 229-5263

FAX (503) 229-6945

TTY (503) 229-5471

Via Facsimile & By Regular Mail

January 9, 2002

Ms. Kim Johannessen
Johannessen & Associates
5413 Meridian Ave. N., Suite C
Seattle, Washington 98103-6138

Re: Brix Maritime Company
9030 N.W. St. Helens Road, Portland Oregon
ESCI No. 2364

Dear Ms. Johannessen:

The purpose of this letter is to provide a written clarification regarding the issues raised in the facsimile you sent to me today. The issues you raised are italicized below.

1. *The extent to which the terms of the Voluntary Agreement for Remedial Investigation and Source Control Measures ("Agreement") and Scope of Work for Remedial Investigation and Source Control Measures ("SOW"), which were enclosed with your November 30, 2001 letter are or are not negotiable.*

DEQ Response: As stated in its November 30, 2001, letter to you, DEQ does not intend to negotiate or revise the substantive terms of the standard Agreement or the SOW developed for Portland Harbor sites. We are willing to negotiate on the wording of Section I (Recitals). This Portland Harbor Agreement and SOW were both negotiated by DEQ with a team of attorneys representing various potentially responsible parties in Portland Harbor. Having done so, DEQ does not intend to modify the Agreement or SOW further for individual PRPs. A consistent approach will be maintained for Portland Harbor Upland sites.

2. *A list of the companies who have entered into the Voluntary Agreement and SOW as drafted.*

DEQ Response: The following parties have signed the Portland Harbor Voluntary Agreement:

- | | |
|-----------------------------|---|
| * Union Pacific Railroad | * Oregon Steel Mills |
| * Portland General Electric | * Port of Portland & Metro (Co-Respondents) |
| * Mar Com | * GATX (Kinder Morgan) |
| * Linnton Plywood | * McCall Oil |
| * Arco | * Schnitzer Investment Corp. (Burgard) |
| * Texaco | * Schnitzer Investment Corp. (Premier Edible Oil) |

USEPA SF



1187219

Remedial Investigations are being performed under Unilateral Order at the following sites:

- * Wacker Siltronic Corp (Wacker and Northwest Natural Co-Respondents)
- * ACF Industries

The following sites have been declared Orphan sites for being "unwilling" to perform the required investigations:

- * Marine Finance
- * Union Pacific Railroad
- * Mar Com

3. *The specific statutory and regulatory provisions, if any, that would prohibit Brix Maritime Company ("Brix") from moving forward with the gathering and reporting of additional soil and/or groundwater data at its property in absence of such an Agreement and SOW.*

DEQ Response: As we discussed in our telephone conversation of November 29, 2001, DEQ does not have specific statutory and regulatory provisions that expressly prohibit Brix from gathering and reporting additional soil or groundwater data in the absence of a signed Agreement. Investigation of individual Portland Harbor sites is not, however, occurring in a vacuum. The additional investigation needed at the Brix Maritime site must be performed under DEQ oversight to ensure consistency with the investigations at other Portland Harbor Sites; provide the natural resource trustees and EPA an opportunity to comment on any submittals and DEQ decisions; maintain a project schedule that is consistent with other upland site investigations in the Harbor and the in-water work being overseen by EPA; and assure that data of sufficient quantity and quality is collected.

If Brix is unable to agree to the terms of the Portland Harbor Agreement and SOW and to perform additional investigation under DEQ oversight, DEQ may use its authority to:

- Issue a Unilateral Order under ORS 465.260(4) to require Brix to perform a Remedial Investigation and Source Control Measures. (Please be aware that the Unilateral Orders used for the Portland Harbor do not include the "off ramp" included in Section III of the SOW); or
- Determine that Brix is unwilling to undertake the required remedial actions necessary to protect human health and the environment and use DEQ's Orphan Site Account (ORS 465.381 through .385) to perform the required investigation using one of DEQ's environmental contractors (after which it would be entitled to recover its costs, in addition to punitive damages of up to three times DEQ's remedial action costs).

In DEQ's letter of November 30, 2001 we informed you that it was DEQ's expectation that an Agreement would be signed by February 1, 2002. This expectation has not changed due to the delay in responding to our letter. DEQ is concerned about the repeated and continued delays on this project and believe a formal Agreement is needed to get the necessary work accomplished on a comparable timeline with other Portland Harbor sites.

Ms. Kim Johannessen
January 9, 2002
Page 3 of 3

We agree with you that by cooperatively working together to address issues at the site and assess potential impacts to the river is the best approach for DEQ and Brix. Please do not hesitate to call me at (503) 229-5562 to discuss site specific aspects of your project, questions regarding the Agreement or SOW, DEQ oversight costs, or possible DEQ actions as a result of non-compliance.

Sincerely,

COPY

Rodney G. Struck, R.G.
Project Manager
Voluntary Cleanup and Portland Harbor Section

cc: Eric Blischke, DEQ/NWR
Mike Rosen, DEQ/NWR
Lynne Perry, DOJ
Bruce Brody-Heine, DEQ
ECSI File No. 2364